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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/367,881	01/03/95	KYLE	D 311.48293
18N2/0628			EXAMINER
BANNER BIRCH MCKIE AND BECKETT ELEVENTH FLOOR 1001 G STREET NW WASHINGTON DC 20001-4597			ART UNIT PAPER NUMBER
			1808 2

DATE MAILED: 06/28/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 1/3/95 ☐ This action is made final

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-50 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-50 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1835 C.D. 11; 453 O.G. 213.
14. ☐ Other

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Part III DETAILED ACTION

This application is a CIP of 202,878.

Claims 1-50 are rejected under 35 U.S.C. § 103 as being unpatentable over the Suntory references ('245 and '255) as cited in the office actions of the parent cases 08/202,878, 08/035,507 and 07/645,454.

Applicant claims a method for producing a single cell oil containing arachidonic acid.

The rejections stand for the reasons of record set forth in both office actions and the advisory action in the grandparent case 07/645,454.

In order to overcome this rejection, applicant could present data to show that the specific culture conditions (which are non-conventional) produce a SCO other than what is revealed in the prior art, i.e. one that contains 5X as much ARA as EPA. A side by side comparison could be very convincing, furthermore applicant should be thorough in the breadth of any such comparison because a showing to overcome a prima facie case of obviousness must be clear and convincing(In re Lohr et al. 137 USPQ 548) as well as commensurate in scope with the claimed subject matter (In re Lindner 173 USPQ 356; In re Hyson, 172 USPQ 399 and In re Boesch et al., 205 USPQ 215 (CCPA 1980).

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1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. Blaine Lankford whose telephone number is (703) 308-2455.



LBL
June 26, 1995



DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1826